

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85264259
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION (no change)	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_24451353-125756240_.req_reconsider.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\852\642\85264259\xml1\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\852\642\85264259\xml1\RFR0003.JPG
DESCRIPTION OF EVIDENCE FILE	request for reconsideration and argument with respect to final refusal to register applicant's mark.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Leo_Zucker/
SIGNATORY'S NAME	Leo Zucker
SIGNATORY'S POSITION	Attorney of record, NY bar member
SIGNATORY'S PHONE NUMBER	914-302-2460
DATE SIGNED	09/24/2012
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Sep 24 13:16:43 EDT 2012
	USPTO/RFR-24.45.135.3-201 20924131643638753-8526425

TEAS STAMP

9-49062504863fafaf67f4fda
1123541ebfb-N/A-N/A-20120
924125756240379

PTO Form 1930 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85264259** has been amended as follows:

EVIDENCE

Evidence in the nature of request for reconsideration and argument with respect to final refusal to register applicant's mark. has been attached.

Original PDF file:

[evi_24451353-125756240 . req_reconsider.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Leo_Zucker/ Date: 09/24/2012

Signatory's Name: Leo Zucker

Signatory's Position: Attorney of record, NY bar member

Signatory's Phone Number: 914-302-2460

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85264259

Internet Transmission Date: Mon Sep 24 13:16:43 EDT 2012

TEAS Stamp: USPTO/RFR-24.45.135.3-201209241316436387
53-85264259-49062504863fafaf67f4fda11235
41ebfb-N/A-N/A-20120924125756240379

Request for Reconsideration

In an Office action issued March 27, 2012, registration of applicant's mark AUTOPIA CAR CARE in Int. Classes 35 and 41 was finally refused under Section 2(d), in view of U.S. Registration No. 2,046,127 for AUTOPIA in Int. Class 37 for automobile repair and service. Reconsideration of the final refusal is respectfully requested.

Likelihood of Confusion

Applicant's services consist of *on-line retail sales of products* for cleaning, polishing and detailing motor vehicles, and providing *on-line publications* in the nature of instructional guides for cleaning, polishing and detailing motor vehicles. The cited registrant's services consist of automobile repair and service. Given that the dominant feature of both the registrant's and the applicant's marks is the term "Autopia", then the issue is whether or not the registrant's and the applicant's services are so related that confusion as to the source of applicant's services is likely to occur.

In the final Office action, the examining attorney attached evidence showing that a number of registered third party marks are used in connection with both "auto repair and service" and "cleaning, polishing and detailing motor vehicles". While active cleaning, polishing and detailing motor vehicles may be performed at the facilities of a business engaged in auto repair and service such as the owner of the cited '127 registration, the applicant does *not* offer such cleaning, polishing and detailing services under the present mark. Rather, as noted above, the applicant uses AUTOPIA CAR CARE for providing *on-line retail sales of products* for cleaning, polishing and detailing motor vehicles.

The registrant's potential customers are owners of cars for which the registrant offers its repair services under the cited mark. By contrast, applicant's customers are car enthusiasts who may purchase auto detailing products at retail via applicant's website. Applicant therefore submits that the registrant's and the applicant's

services are sufficiently unrelated as to avoid any likelihood of confusion under Section 2(d) of the Trademark Act.

In view of the foregoing, the Section 2(d) refusal should be withdrawn and the application allowed to pass to publication. A Notice of Appeal is being filed concurrently herewith.

Respectfully submitted,

PALM BEACH MOTORING ACCESSORIES

Leo Zucker

By: Leo Zucker, Attorney for Applicant

Tel: (914) 302-2460

September 24, 2012